



New South Wales

Commission for Children and Young People Amendment (Child-related Employment) Regulation 2010

under the

Commission for Children and Young People Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Commission for Children and Young People Act 1998*.

PETER PRIMROSE, MLC
Minister for Youth

Explanatory note

The objects of this Regulation are as follows:

- (a) to provide that the background checking procedures of applicants for child-related employment under Division 3 of Part 7 of the *Commission for Children and Young People Act 1998* (*the Act*) apply in relation to volunteers whose work involves mentoring disadvantaged children only if the mentoring comprises developing family-like relations and regular and ongoing meetings with those children,
- (b) to extend the meaning of “child-related employment” for the purposes of Part 7 of the Act so that it covers employees of persons or bodies contracted to provide services for certain government agencies (so long as the employment involves direct contact with children) as well as persons who provide personal care services to children with disabilities (where the employment involves an intimate level of direct contact with those children),
- (c) to phase-in the effect of extending the meaning of “child-related employment” insofar as it relates to prohibited persons who are currently employed in that type of work,
- (d) to provide that the definition of “child-related employment” for the purposes of Part 7 of the Act does not include work performed by a self-employed person or subcontractor on certain government agency premises if the direct contact with children that is involved in that work is not regular (or done on an extended basis) and the person’s or subcontractor’s presence on those premises is merely fleeting or transient,

2010 No 44

Commission for Children and Young People Amendment (Child-related Employment)
Regulation 2010

Explanatory note

- (e) to defer (until 1 May 2011) the requirement for a self-employed person who engages in paid child-related employment to hold a certificate to the effect that the person is not a prohibited person within the meaning of Division 2 of Part 7 of the Act.

This Regulation is made under the *Commission for Children and Young People Act 1998*, including paragraph (b) of the definition of ***child-related employment*** in section 33 (1), sections 33P and 51 (the general regulation-making power) and clause 1 (1) of Schedule 3.

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under the

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1 Name of Regulation

This Regulation is the *Commission for Children and Young People
Amendment (Child-related Employment) Regulation 2010*.

2 Commencement

This Regulation commences on 31 March 2010 and is required to be
published on the NSW legislation website.

2010 No 44

Commission for Children and Young People Amendment (Child-related Employment) Regulation 2010

Schedule 1

Amendment of Commission for Children and Young People Regulation 2009

Schedule 1 Amendment of Commission for Children and Young People Regulation 2009

[1] Clauses 10 (6) and 11 (7)

Omit “1 May 2010” wherever occurring. Insert instead “1 May 2011”.

[2] Clause 14

Insert after clause 13:

14 Exclusion from “child-related employment”: background checking not required for certain volunteers

Child-related employment (as referred to in paragraph (c2) of the definition of *primary child-related employment* in section 37 (6) of the Act) does not include work performed by a volunteer that involves the mentoring of disadvantaged children unless the mentoring comprises:

- (a) developing family-like relations, and
- (b) regular and ongoing meetings with the children concerned.

[3] Part 4

Insert after Part 3:

Part 4 Miscellaneous

15 Definition of “child-related employment”

(1) Extended meaning—employees of persons or bodies contracted to provide services for relevant agencies

For the purposes of Part 7 of the Act, child-related employment includes work performed by a person who is an employee of a person or body that is contracted to provide services for a relevant agency within the meaning of that Part 7, but only if:

- (a) the employment involves direct contact with children and the contact is not directly supervised by a person having the capacity to direct the employee in the course of his or her work, and
- (b) the direct contact occurs on a regular or extended basis on premises occupied by a relevant agency, and
- (c) the employee’s presence on those premises at any time is more than just a fleeting or transient presence.

(2) **Extended meaning—provision of personal care services to children with disabilities**

For the purposes of Part 7 of the Act, child-related employment includes employment that involves the provision of personal care services to children with disabilities, but only if:

- (a) the employment involves an intimate level of direct contact with those children (such as assistance with bathing, dressing or toileting), and
- (b) the contact is not directly supervised by a person having the capacity to direct the person in the course of the employment.

(3) **Limited application of definition in relation to self-employed persons or subcontractors**

Despite paragraph (a1) (vii) of the definition of *child-related employment* in section 33 (1) of the Act, child-related employment for the purposes of Part 7 of the Act does not include work performed by a self-employed person or subcontractor on premises occupied by a relevant agency if:

- (a) the direct contact with children involved in that work does not occur on a regular or extended basis, or
- (b) the presence of the self-employed person or subcontractor on those premises at any time is merely fleeting or transient.

16 Transitional provision relating to existing prohibited persons

- (1) In this clause:
existing prohibited person means a person who, immediately before 31 March 2010, was a prohibited person.
- (2) For the purposes of sections 33C and 33E of the Act, child-related employment does not, to the extent to which those sections would otherwise apply in relation to an existing prohibited person remaining in child-related employment or an employer continuing to employ such a person in child-related employment, include child-related employment as referred to in the following provisions:
 - (a) paragraph (a1) of the definition of *child-related employment* in section 33 (1) of the Act (as inserted by the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009*),
 - (b) clause 15 (1) or (2) of this Regulation.

2010 No 44

Commission for Children and Young People Amendment (Child-related Employment) Regulation 2010

Schedule 1

Amendment of Commission for Children and Young People Regulation 2009

- (3) Subclause (2) ceases to have effect in relation to an existing prohibited person who is employed in child-related employment as referred to in subclause (2) (a) or (b) on whichever of the following dates is the later:
 - (a) 1 July 2010,
 - (b) if the existing prohibited person makes a review application under section 33H or 33I of the Act before 1 July 2010—the date on which the review application is withdrawn or finally determined.